Please stand by for realtime captions >> , I'm Karen Hawkins, the director of the office of respectable -- of his of professional responsibility. Before we begin there a couple of things I say. First of all, we like to extend a welcome to any participants from the news media. If you are with the media, please send an email message at sbse.webinars@IRS.gov. With your contact information. A media relations staff can assist you in clarifying the discussion or answering any questions you might have following the presentation. You can ask questions during the webinar by clicking the ask a question link under the PowerPoint window and selecting the Submit button. Immediately following the presentation I or a member of my staff will be responding to your questions during the Q&A segment. We will answer as many questions as time allows and ask that you limit your questions to the topics covered in the webinar today.

Today's webinar is circular 230, the office of professional responsibility, soup to nuts. I'm going to talk to you about the foundational basis for what we call circular 230. I'm going to talk about procedure which seems to be the thing that people are curious about. Then I'm going to identify and discuss handful of important provisions in Circular 230 that are being discussed because they are new as of June 12, 2014 or because they are provisions that we think are important for you to know about or because they are provisions that practitioner tends to get themselves sideways with. The discussion will focus on three primary areas of interest in the circular itself once I get there. But let's start first with the statute and the history. Most people are really surprised and you can see from the first slide that we put up -- that this statute is so old. They are surprised it to see that it's not in title 26 of the IRS code. That citation is title 31 of the US code section 330. Date in the parenthetical is not typographical error. This statute states all the way back to 1884 so it's an old provision. It essentially was enacted as an amendment to legislation that was referred to as the Horse Act and Congress passed this just after the Civil War in order to invite the citizens to come to Washington and make claims for reparations for lost or so property that had occurred during the Civil War. Most of that lost personal property that was being claimed was worse is; hence the name Horse Act. With the treasury discovered early on in the legislation's history was that there were more people coming to Washington making more claims for more courses than could possibly have existed during the Civil War. So treasury went back to Congress and said we need something that will help us regulate the integrity of this claims process. Congress gave treasury 31 USC in 1884. This essentially authorizes treasury to regulate the practice of representatives of persons before the Treasury Department. Notice that the references are to the Treasury Department, not to the IRS because I can 84 1884 we don't have an income tax as we now know it today and we didn't really tab and Internal Revenue Service as we know it today. And these claims were really being made before the Treasury Department was hearing the various arguments that were being made about

valuations of horses. So the statute goes on in addition to authorizing treasury to regulate the practice of representatives for it, it goes on to authorizing treasury to make determinations about these representatives -- what I call fitness to practice. In the statute essentially identifies those characteristics as people who have good character, good reputation, have the necessary qualifications to provide a valuable service to their clients, and that they are competent to advise and assist the persons in presenting their cases.

When my office get the referral from anyplace -- and I'll talk about this later in the webinar -- these are the foundational issues and focus. This is where we start -- what it does the referral say to us about a practitioners integrity, which is really me lumping character and reputation, where their competence which is their qualifications and their competence under the statute. And from there we then needed to looking at what the specific violations might be. So, it wasn't too long as it often isn't with federal legislation, that Congress started to write regulations that would explain more about the statute then just the statutory language. The first regulations that were issued, were issued again as the slide shows you -- under title 31 -- subtitle a part 10. The first one coming out is 1886. They were essentially providing guidance for all administrative practice conduct before the agency, the Treasury Department -- again, not the Internal Revenue Service at that time. In 1921, however, we did have an income tax -- we've had an amendment to the Constitution. We did have an Internal Revenue Service as it is formulated more so today. And the people who were then practicing mostly in representation of taxpayers before the Internal Revenue Service were not able to find what their ethical duties and responsibilities were because it was all in title 31, not in the new provisions in title 26.

Treasury created a publication labeled treasury department Circular 230 and that was in 1921. The difference between Circular 230 and most other publications that you would see from the IRS are that the other ones try to tell you in plain English what a particular statute or procedure is under title 26. Circular 230 is a verbatim left of the regulations from the Code of Federal Regulations so there's no annotation, there's no side comment. It's strictly a publication that is just we printed the regulations in a form that tax professionals can find because it is in the tax publications. Circular 230 , as we all call it now even though again it's really regulations -- has 4 parts.

The first part at Subtitle A is referred to as Authority to Practice. That essentially contains all the definitions -- with the practitioner, who may practice before the agency, what to does practice mean, and I'll tell you about not a minute. It also contains all the provisions with respect to people who wish to be licensed by the agency to practice before it. The IRS is unique in that respect because other federal agencies -- with one exception

that I can think of -- only allow mostly lawyers, sometimes CPAs represent other people before it.

The IRS is one of the few agencies that has actually concluded and this happened back in the 50s that it would invite other people who were competent and had integrity and had demonstrated that in some fashion to represent people before the agency in agency practice. And so subpart A also contains all the rules and guidance for people who want to become enrolled agents, enrolled actuaries, or enrolled retirement plan agents. Those areas of Circular 230 are actually administered by another division of the IRS -- the Return Preparer Office. And those are not provisions that I'm going to discuss today.

Subpart B is probably the bread and butter of Circular 230 and the most important part as far as my office and I are concerned of the regulations. Subpart B is titled Duties and Restrictions Relating to Practice and it contains 19 regulations that identify various kinds of ethical behavior that the agency believes is appropriate to monitor and oversee with respect to people who represent others before the IRS. So, there you'll find provisions about solicitation, find provisions about unconscionable fees, you'll find provisions about conflicts of interest, you'll find multiple provisions about due diligence.

I will discuss those later in the webinar.

My advice to people with respect to subpart B is don't try to read it all at one sitting or ever for that matter, what you want to do with Subpart B is look at the table of contents and see what the headings and subtitles are and you want to see whether it relates to something that you are currently interested in. Some of these are very complicate it reads, they are very convoluted and in many respects they won't make any sense to you if you don't have a particular issue in front of you that involves that provision. Most of the headings are pretty self-explanatory, so I think you can figure out whether it applies to a situation you're interested in and I'm going to help a little bit with that when I talk about some of the key provisions that I think you should be mindful of. Subpart C of Circular 230 is labeled Sanctions for Violations and it's a little bit of a misnomer because right in the middle of subpart C which doesn't act address the various kinds of sanctions that are authorized to be proposed for discipline -- it does discuss the fact of the authority to propose the discipline -- but right in the middle at 10.51 is a vision labeled disreputable and incompetent conduct. That is a purchase decision that I would advise everyone to be in total. There are 18 subparts to 10.5 1a and I'm going to discuss a couple of them but there are many others that would be important to you that you need to look at and it's not as long a read as subpart Will be. It's just a single regulation with multiple subparts. That one you should read. I refer to 10.51 is the agency's rules of engagement because what you'll find there are not just references to certain ethical conduct that the

agency or unethical conduct that the agency would consider disreputable or incompetent the you'll find other kinds of procedural expectations from the agency because they've identified them as important to the smooth running of tax administration and they want all tax professionals to adhere to them. So you'll find rules about you need to have a PTIN if you're going to prepare tax returns or your need to e-file if you meet the statutory criteria to do so. Your need to sign the tax return you've been prayed to prepare and that's not what I would call ethical rules that they are included in this 10.51 as rules of engagement and they are potential charges are subjects of discipline that we might pursue if you're failing to adhere to them. So I think it's important that you read that one all the way through.

The last part, subpart T of Circular 230 is a section I hope you never have to read -- it's labeled the disciplinary procedures and I will give you an overview of that in a minute. It does go into great detail about how the disciplinary process works. All the rules that OPR has to follow. How it moves through the process. The fact that you are entitled to due process throughout -- you have an opportunity to be notified of what's going on, you have an opportunity to defend yourself. All of that is contained in subpart D but it's a tough thing for somebody who's trying to read it out of context which is why I don't encourage those people to read subpart D into you actually need to do it.

The next slide is primarily informational. It contains the first bullet and tells you where you can find the most current version of Circular 230 online@IRS.gov. It's important to know that the most recent vision visions and some of them significant were just made in June -- June 12 they became final in 2014. I'm going to discuss those later in the webinar. When you go to IRS.gov and typing circular 230 make sure that when the search pull up various choices for you that the document your clicking on to read is the one that is stated 6/2014 because that will be the most current version.

The other thing that I wanted to point out is that there was a revision to form 2848 that is effective July 2014. And the language on the second page for those of you who to representation, you'll recall there's a litany of items that you attest to. You attest to being an attorney in good standing, a CPA in good standing, and enrolled agent licensed by the agency. It goes down A to HRI in terms of what you are identifying. Before that litany the Excel recitation of general statements. One of them is that you are not currently under disciplinary action by the Office of Professional Responsibility. Another one is newly added which is why I'm calling your attention to it. On the 2848 and it essentially has you recognize -- and you are signing that page under penalty of perjury that you recognize that you are subject to regulations contained in circular 230 either as they've been amended or as they've been amended or that governed rectus before the Internal Revenue Service. So the minute anybody signs eight So the minute anybody signs 82848 to represent someone else in the system they have acknowledged the jurisdiction and oversight of Circular 230 and the Office of Professional Responsibility. And that would apply whether the individual is technically defined in the circular as a

protection are whether they are proceeding pursuant to to some of our limited practice provisions.

The next slide talks a little bit further about where OPR gets it authority and what the oversight duties and responsibilities are. And the first references to the very first regulation in Circular 230 which is 10.1. This was revised and expanded June 2014. 10.1 a 1 makes it clear that despite the language throughout Circular 230 that addresses everything in reference to the IRS, that the exclusive authority for disciplinary procedures and sanctions rests with the Office of Professional Responsibility. That is also borne out in several delegation orders signed back in 2012 by then Commissioner Shulman also acknowledging and delegating exclusive authority to the office of professional responsibility for the oversight of rectus standards. So OPR gets all the referrals with respect to practitioner misconduct. OPR does its own independent investigations. Of any referrals that against the matter what source whether it's an internal or external source. And we make our own independent determinations about whether, in fact, a practitioner has behaved in a way that has made a statement about their lack of fitness to continue to practice. Those fitness characteristics -- character, reputation, qualifications and competence. We are always looking to those when we do our own investigation. >> We don't always follow through once we receive a referral from the field. We may disagree that there has been a violation significant enough to warrant discipline or that there has been a violation at all. And it, hopefully, will give you some comfort to know that on an annual basis we run about 700 to 800 cases to our inventory. Of that 700 to 800, close to 75% are closed without some sort of formal disciplinary action. So it is something that either involves a reprimand, a soft letter, a wake-up call as I recall it -- or no action at all. So we take our independence and the necessity for us to do our own investigations about discipline area, very seriously and I think it's borne out in our statistics.

If we do find a case that we think warrants additional investigation and perhaps discipline we are then in a position to propose and negotiate discipline and if there's nothing else that you take away from this portion of the webinar I want you to hear those words very clearly. We do not impose -- we do not have unfettered authority to discipline you, to do a sensor or a suspension , to do a disbarment. We cannot do that in any arbitrary way. We have to propose to you that we've seen misconduct and you have to agree with us and then we negotiate a resolution. If you choose to disagree with us than we have other options that I will discuss during the section that I'm going to talk about about the process. But we cannot ever arbitrarily impose discipline and is terribly important to me and I think for you to understand that and that's covered in the subpart D that I don't encourage you to read.

We are also responsible for proceedings when they go before an administrative law judge and for any appeals that may occur with respect to decisions made by ALJ I level, cover this in more depth as we get into the webinar. >> In Circular 230 10.2 a 4 there is a definition of practice. What does it mean to practice before the

Internal Revenue Service? Well this is very broad. It essentially says that practice, templates all matters connected with the presentation to the Internal Revenue Service with respect to a taxpayers rights, liabilities, and privileges under laws and regulations administered by the Internal Revenue Service. And you note, in that PowerPoint I have bolded the Administered By -- as many of you know the IRS administers more than just Title 26 stuff. It has been asked over the years to administer things that are outside of the Internal Revenue Code. For a bank account reporting is probably one of the ones that is most familiar to people. That is actually a Title 31 set of statutes and regulations that the IRS about 10, 12 years ago was asked to take on that administration and they have done it ever since. The upcoming affordable care act activity much of which is not contained in Title 26 is another area that the Internal Revenue Service has asked to assist with administration of, and that is not all tax related. So, the administered by is bolded to remind you that you can sometimes be practicing before the IRS without having it be a specific tax law you are addressing. You may be addressing some other kind of law. The second bullet is essentially a lift from the regulation and it gives you a not all inclusive list of the sorts of things that might constitute practice. Preparing and filing documents, corresponding, communicating, rendering written advice and the thing that most people think about as practice -- representing a client at conferences or hearings or in meetings. The one thing that practice currently does not cover as a result of recent litigation is Mayor tax return preparation. Many of you might be familiar with the case called Loving versus the IRS which was a challenge to the agency's efforts to regulate the previously unregulated tax return preparation industry. Some of you may recall that part of that regulation imposed mandatory testing and continuing education requirements. The lawsuit was brought challenging the agency's statutory authority to do that. It went all the way to the circuit Court of Appeals in DC and the agency lost. So the current status of the practice definition is that if you are merely preparing a tax return -- my version of that is if you're a mere scrivener -- putting numbers on a form -- you are not technically covered by these provisions. However as many of you who might be unlicensed and unenrolled realized if you are prepared and signed a return you may under agency policy represent that particular taxpayer on that particular return before the agency. An order to do that representation you have to submit a power of attorney -- a 2848 to advocate on behalf of your client. I just mentioned to you that the latest revision to 2848 has you acknowledging that when you come into to representation on that return you are covered by Circular 230. So it's a bit of a slippery to slope to say as an unlicensed return. That you are not covered by circular 230 because the facts and circumstances are going to change depending upon your relationship to the agency and what you're doing for your client.

One of the provisions that was revised it's not a new provision but it was revised as part of this June this June 2014 center revisions was one that I refer to as the responding not so. Your provision. It focuses on the practice concept and the need for anybody engaged in practice or anticipate engaging in practice before the agency to understand what their duties and responsibilities under Circular 230

are. So here we have on this slide a reference to procedures to ensure compliance under 10.36 which is a provision, as I said, that has been in the circular but because of other modifications this one has been revised. Essentially the rule now is that anybody in a firm or a business who has or shares the principal authority and responsibility for overseeing the firm's practice that involves Circular 230 matters -- so all tax matters as well as any other laws and regulations administered by the IRS -- have to take reasonable steps to ensure that anyone and everyone who is engaged in that firm whether they be members or associates or employees be aware of their duties and responsibilities under Circular 230 and that they are hearing to subparts a BNC -- the ones that I discussed with you earlier of the circular.

If it turns out that the firm is not a borough willing to identify a principal person or persons who have authority and responsibility the regulation authorizes OPR to identify a logical principal person so people don't get away with avoiding responsibility under this provision by not giving anybody ultimate authority. If the person identified either self identified or identified by OPR as having this principal authority they will be subject to discipline for failing to comply with 10.36 under the following circumstances -- the first one being if they fail to take the reasonable steps that have been required of them to ensure that the circular and the obligations under the circular are known to their employees and are being properly followed. And in that context someone else in the firm -- an employee, an associate, an independent contractor -- violates Circular 230. Then the individual who is actually violated the circular would be responsible for their own misconduct and whatever discipline it may bring but the individual who should have assumed the response he ought superior role and didn't will also be looked at for whether they should be a level of responsibility attributed to that person. >> The second instance is it that the individual responsible takes the reasonable steps and does put provisions in place to ensure compliance and to ensure knowledge of the obligations under the circular and individuals in the firm either violate or have violated the circular and the individual is aware we should have been aware of the violations and failed to take steps to stop the violations, then we would also take a look at the individual. So, in an informal sense it's the buck stops here concept for people who choose to employ others in the context of tax representation and tax practice.

One of the things that people are the most curious about with respect to OPR and Circular 230 is the discipline process itself. I discourage you from reading subpart D but I will tell you how it works in a way that will give you comfort because if there's nothing else that you take away from this you should take away from it the fact that there is a lot of opportunity for you to explain yourself and we are more than willing to listen because we are aware that we do take disciplinary action we are essentially depriving someone of their ability to earn a living for some period of time and we do not do the slightly so there's a lot of safety nets and safeguards built in two subpart D. The first part -- where do we get the referrals from? The referrals, as you might think logical come from field personnel. People in the examination

division, people in the collection division, revenue agents and officers -- settlement officers and appeals officers and appeals -- these are all sources for us. From all portions of the agency whether it be as BSE -- TEDE or of you and I. We get referrals from all over the place. We also have a close working relationship in both directions with the criminal investigation division of the IRS and with the treasury specter general for tax administration. CI -- the criminal investigation division does the investigations of title 26 crimes. TI GTA -- for tax administration does the investigations for alleged title 18 crimes committed by practitioners. Both of them are resources to refer cases to us either after an investigation has occurred and a prosecution has been declined or a prosecution has occurred and there has been a conviction. So, we will get information from those organizations and we also get information about convictions and injunctions from the Department of Justice. So we have a very broad range of relationships from which we get our referrals but the real meat and potatoes of source for us are the field personnel -- the revenue agents, the revenue officers, and the appeals personnel. So when an appeal or when a referral comes in, there's a specific internal form that everyone uses to send it to us and they send us -- we asked them to send us as much information as they can that supports the basis for why they are saying they see a circular 230 violation.

You might be interested to know that 10.53 of the regulations of Circular 230 makes it mandatory for all IRS personnel to make referrals to the Office of Professional Responsibility whenever they suspect that there has been a violation of the circular. So IRS personnel are under another issue to tell us when they think they've seen misconduct. And we advise them not to second-guess, not to try to do the analysis. They should do a very high level of at what they've seen to see if they think it's a violation. They send it over to us and then we do the evaluations. So we evaluate the case. We evaluated for jurisdiction because some people we don't have jurisdiction over. We evaluated for Circular 230 violations -- has there actually been one that we can see that speaks to the practitioners fitness -- we would look to see whether whatever the practitioner has done suggests a certain kind of willful conduct or gross incompetence or reckless behavior all of which are actionable under Circular 230 The other thing you might want to know that tends to make people little nervous but you can understand why we would do it is when we get a referral and were evaluating our jurisdiction in this Circular 230 violations, we also checked the practitioners own personal tax compliance to make sure that they have filed their own personal tax returns and any entity returns over which they have some control and whether they have paid all of their tax liabilities are not. It's unbelievable how many practitioners are referred to us for behavioral matters that we would probably conclude to close without action with a soft letter or maybe a private reprimand but the practitioner also has tax compliance problems which puts OPR in the position of having to go forward because 10.5 1a 6 of Circular 230 exit disreputable and incompetent conduct for a practitioner to willfully fill to file their own tax returns were to willfully evade the assessment with the payment of attacks. So it becomes a Circular 230 violation when we discover it and there's more of that than I would like to see, frankly.

So, we look, we evaluate, and then depending upon what are valuation shows us we try to look for a turn it of ways to get the practitioner a wake-up call that won't result in them having to lose practice rights.

I have devised since I arrived in OPR in 2009 various options that are used in order to give these wake-up calls. Some of them are referred to as soft letters. A go to the practitioner. It's a private letter that nobody else knows about and we try to wake the practitioner up to the fact that they've done something that someone else that was a violation. We think it looks like maybe a bad day although technically it probably is a violation. Were not going to pursue it at this time but we want them to pay attention to Circular 230. The reprimand is a bit stronger and we are usually saying yes we see that you violated the circular but again it appears to be a one-off behavior for that particular practitioner and were not going to take action that time around but the reprimand does become a record so that if subsequent referrals are made to OPR on that particular practitioner will start to demonstrate a pattern of willfulness, gross incompetence or reckless disregard for the rules and regulations all of which rise to the level of actionable conduct under Circular 230. So after we considered that the alternative discipline options, and we're still going to proceed and it is a conduct matter as opposed to a tax compliance mentor, we will send often a reallocation letter because most of the time we get the referrals we don't have all the documentation , all of the evidence or all of the information that we would like to have an order to make an absolute judgment about the particular case. So we'll send a letter to the practitioner that says hey, we got a referral. Here's what they said you've done. Here's the provisions or provision in Circular 230 that you appeared to have violated. What would you like to tell us about that ? What evidence would you like to give us? And by the way we also have a few questions for you. And we may post some informal requests for information, documentation. It's kind of a combination of a notice letter and a little bit of a informal discovery that will be sent to the practitioner. It's the practitioners option to respond although I would highly advise anybody who gets one of those that it's in their own best interest to respond it to it in some way. As thoroughly as you can. Very often when people respond to what we call these three allegation letters -- three -- pre-allegation letters -- we think it is important to pay attention to any correspondence that you get from us.

If the practitioner fails to respond to an allegation letter or there is no three allegation letter warranted we will commence the additional investigation that we feel we need in order to develop the entire case. We have paralegals and lawyers that do this work. And when they reach a point where they believe they got enough evidence to point to one or more provisions in circular 230 that it been violated, they will send an allegation letter. Allegation letter is a much more formal serious document in the sense that it does lay out all of the alleged misconduct whether it is been discovered by us are sent to us by the field and it identifies each and every provision in Circular 230 that we believe has been violated. At that point in time in the allegation letter the practitioner is invited and advised that they can request a

conference to, again, discuss the case and to negotiate and propose any settlement. We take the position and the regulations essentially instruct us to take this position that it is the practitioners option to propose the first -- make the first part with respect to to discipline. So the practitioner can talk to us on the phone. They can come into our offices. Unfortunately, right now that means coming to Washington DC because that's where my entire staff is located. They can be represented by someone who is otherwise authorized to represent before the Internal Revenue Service or they can represent themselves. I think as I have watched these cases evolve over the last five years I would say that representing yourself can be a very dangerous enterprise, mostly because practitioners are not familiar with the circular and with the provisions and particularly with the procedures well enough and it's very difficult to stay objective and unemotional about the situation when it's your own that you're dealing with. So if you're in a position it all to get representation in these situations, I highly advise it.

So the conference would be held. Presumably the practitioner would make at our invitation would make a proposal for settlement. I can pretty much tell you that by the time you get into a conference with us, thinking that you can propose a private reprimand and everything will go away is probably not realistic. If we take in as much resources as we have to develop the case enough to be inviting you for a conference, we think that behavior is more serious and warrants something more than a reprimand. You need to be realistic about the king about the other options for discipline and I'm going to discuss those in a second as well. So the practitioner must make the put to us and then we begin the negotiation. Maybe we disagree we think it should be more discipline I can assure you we don't everything it should be less. Usually it is a situation where the practitioner has been unrealistic about the seriousness of their violations in their conduct. And there will be a negotiation process. If were able to negotiate something then we will enter into a private settlement agreement with that practitioner. The terms of the settlement agreement will remain confidential as long as the practitioner keeps them off for dental. We will not to disclose them to anybody even other parts of the IRS. The only thing that will happen in a private settlement is it will be a publication in the internal revenue bulletin that identifies the practitioner, identifies their license status whether they are an attorney or CPA or enrolled agent and identifies their geographic location by city and state and identifies the provision in Circular 230 that the practitioner has agreed that they violated. Whatever else the terms contain will might be disclosed. They are published in the IRB on a quarterly basis by OPR and you can go to any quarterly IRB and take a look and you can see a long list of disciplinary actions that are been taken by Circular 230 -- OPR. They're not able to agree on a settlement OPR -- I mention this earlier -- at that point in time we do not have authority to impose discipline on you arbitrarily. If we disagree with your vision of your transgressions and we can reach a private settlement, the only option that OPR has is to take your case before an administrative law judge and essentially propose that the administrative law judge discipline you. At that point in time we were drafted complaint and you would have a chance to answer. Our complaint would state the facts in terms of

what there is about your conduct and behavior that we believe constitutes various violations of Circular 230 and it would contain a recommendation to the administrative law judge as to which level of discipline we think is appropriate. The ALJ will hold a hearing and the hearing can be held anywhere in the country -- OPR usually tries to accommodate geographically the practitioner and it is us that flies to you and take the ALJ with us. Treasury does not have ALJ so OPR contracts with others. After the hearing there is a briefing period and the ALJ can make a decision. The ALJ can reject the OPR the complaint in its entirety, if it helps that is never happened while I been the director. The ALJ can accept the OPR complaint

both to the allegations in the recommendation in its entirety and impose whatever the recommendation discipline was with the ALJ can modify . Usually they are finding some or all or agree with us on the conduct violations but they disagree on the level of discipline.

The thing to keep in mind about that is they have agreed with us in both directions. They can lower the amount of discipline that we've recommended but they are also free to raise the amount of discipline we are recommended. As I said, they have succumbed to go free in either direction so it's a little bit of a gamble we start going in before the ALJ for both sides. If either side does not like what the ALJ has said or does not like the decision within 30 days there is an appeal option and that appeal is to someone referred to as the Treasury Appellate Authority. That individual is a someone specially appointed through the treasury general counsel and then through chief counsel of the IRS to be the individual who makes the final agency decision. So there would be additional briefing before that administrative law -- I mean the appellate authority -- and then he -- would render his decision . Immediately on the issuance of the appellate authorities decision, the matter becomes a final agency decision. If there is no appeal on the 31st day after the ALJ has rendered his or her decision, it becomes a final agency decision that is just the ALJ decision. In either instance whether we have just and ALJ or appellate authority decision once the decisions become final we publish those on the OPR website

of IRS.gov. So, since September 2007 every case that has been decided by an ALJ and/or appellate authority is available for you to view on the website if you're curious.

Now I mention the final agency decisions and I think I've pretty much described them in detail. That's essentially on the slide for you to have as a reference. But what you need to remember about those is they are public. The entire decision is public. We we jacked it if there happens to be confidential tax return information, but in most of these cases, there's not very much of that Coso the reductions are fairly light so that the cases are relatively easy to read with not a lot of black space.

That concludes my discussions of the administrative processes, the historical oversight, and the authority -- the source of authority of OPR and Circular 230. >>

I'm Tamara and I work for the IRS. Did you know that the IRS has more than 150 videos and archived webinars on numerous topics to help you in various tax issues? It's true. They can all be found together

on the IRS video portal. To get to the site go to IRS.gov and type video portal into the search box were go there directly by typing www.IRSvideos.gov into the browser. You will find topics immediately arranged such as deals for individuals, small businesses, tax professionals, and more.

If you are interested in watching webinars like this one which have been previously broadcast click the All Webinars tab. You won't be able to get credit by watching the archived version but you will get helpful information. The most popular feature on the video portal is the small business workshop. So far it has been viewed 200,000 times. You may also want to check out the your guide to an IRS audit which can hopefully take the fear of an audit by let letting people know what to expect and what their rights are during an IRS audit. Again, you can get to the video portal by going to IRS.gov and type video portal into the search box. >> I'm going to discuss some key Circular 230 provisions with you and as I mentioned I selected these four one of three reasons -- one, their new where they been newly revised as of June 2014; two, they are provisions that we think people need to know about-or 3 they are the provisions that practitioners get tripped up the most about and so we feel we need to call them to your attention.

I'm going to start with 10.22 which is the general due diligence provision. This is sort of, for me, one of the most important revisions in the circular just because it really says it all. It is very short and very sweet, but it says everything you need to know about good practice for the agency because it says that you must exercise your due diligence in preparing, approving, filing anything -- returns, documents, affidavits, protests, anything that relates to IRS matters. It goes on to say that you must exercise your due diligence to ensure the accuracy of information, oral or written, that you are making to your client or to the Treasury Department. So, this provision knowledges the 2 has that you were -- you have certain obligations to your client to make sure that you are giving them correct inaccurate information and you have provisions to the agency to make sure that the representations that you're making on behalf of your client are accurate and complete and correct. There is a safe harbor in 10.22 that says that if you rely on the work product of another, you will be deemed to have exercised reasonable due diligence but only if you have used reasonable care in selecting, engaging, supervising, training, overseeing, or evaluating that individuals work. So that's going to be a fact and circumstance test. How you deal with someone's work product when they work for you is different than how you would do with someone's worth work product if it's coming from a third party. So, your obligations with respect to your employees to be able to rely on their work product would be to use care in selecting and hiring them and making sure that they are properly trained so they know what they are supposed to be doing and making sure they know about their duties under Circular 230 and then at least on a periodic basis evaluate what they are doing to ensure that they continue to know what they're doing and that they are not making mistakes that could get your entire firm in a problem with Circular 230. If it's a third-party and I think most often hear the example of K-1 where your client might bring you a K-1 that has been prepared by a third-party for the entity and so all you've got

is the K-1 can you believe that can you trusted? Well, unless there is some external information that you have coming from your client or because you're aware of whatever the entity's activities are or you know the preparer who did the entity return and are not comfortable with their work, I would say that you can take that K-1 for its face value. But if your client suggest to you that they think there's something wrong with that K-1 that it might be time to ask more questions before you can say that you exhibited to diligence.

I get a lot of questions from people about what it means to exercise due diligence. It's a difficult concept to describe in words although there is myriad law on the matter. A lot of cases involving due diligence in connection with lawyers -- due diligence related to trustees and judiciaries. There is a body of law about it but each one rises and falls, friendly, on facts and circumstances. There are 3 basic premises that I use when I talk about two diligence to help people understand. The first is -- before you can do any due diligence you have to know what the relevant fact are. You have to ask your client questions. You have to know what the client acts are and you have to know which ones are relevant. Clients do not know what relevant facts are. You are the one that's the expert and you need to frame your questions to extract the relevant facts from the client. Once you think you have all the relevant facts you have to make sure that you know the law. Sometimes you get lucky and you already know a lot. Can apply it immediately. Other times you may not know exactly what the law says and you may have to go look it up. That's all right -- we all have to do that. Everybody doesn't know everything in the Internal Revenue Code. You may have to research it. Or you may have to ask someone else about an aspect of the law to explain it and you may have to take a class. You have to know what the law is. Then you have to take the clients relevant fact and match them up to what you believe to be the applicable law. As I usually say if your client has round facts and the law is square they won't fit.

Matter how Howard you push them together. At that point in time the due diligence obligation to the client is to tell them so. With any luck at all the client has come to you in advance and ask for advice. You can think of alternative options that will get the client to where they wanted to be whatever the transaction was what the matter was without any harm. However, if they come to after the fact and its January or February of the year after they did whatever they want you to report on their tax return in a certain way, you will unfortunately as a part of due diligence obligation both to the client and treasure really have to tell the client it won't work. You will have to explain why -- there's no way around it. Client will have to understand it. That's what due diligence means when it says that you have to determine the correct this and make sure you are expressing it correctly to your clients and to the Treasury Department.

That is 10.22.

The next provision is another two diligence provision which is pretty much bread and butter for a lot of people in the tax world. That's the two diligence standards as they relate to tax return preparation and

submission of other documents. So I mentioned earlier that after the Loving case mere tax return preparation is not covered under Circular 230 and mere tax return preparers are not deemed to be practitioners. However, the Loving case made it clear that those of you who are already covered by circular 230 by virtue of your other representational activities are subject to all the provisions, and when you prepare returns section 10.34 applies to you. I'm going to discuss it. The due diligence provision under 10.3 4a for the preparation of tax returns essentially says that you may not sign a tax return nor may you advise taking a position on a tax return that lacks a reasonable basis. That concept of reasonable basis is tied to the same concept of reasonable basis in the Internal Revenue Code under the accuracy related penalty at 6662. So all of the definitional concepts can be found in the IRS regulations. 10.3 4a goes on to say that you may not sign or advisor position on a return that is unreasonable and it refers you to 6694 of the IRS code. 6694 is the preparer penalty and it finds an unreasonable position is one that lacks substantial authority that's also defined in 6662 but has a reasonable basis and is disclosed. And I tell you in a minute what disclosure for Circular 230 purposes means. 10.3 4a also says that you may not sign or advice with respect to a position that is a willful attempt to understate liability either by you or your client or that is a reckless or intentional disregard of the rules and regulations and this is where we get back to the general due diligence will again. You must understand what the applicable law is with respect to your clients relevant facts and if you fail to do that, and the law is pretty obvious or the law is easily found, then you will have been recklessly or intentionally disregarding the rules and regulations. In this context patterns are always going to matter. A single mistake is not going to do you in, but multiple mistakes, multiple demonstrations of recklessness, multiple illustrations of this regard or incompetence are going to pull you into this provision.

The second part of 10.34 is less known -- subpart B but just as important. And it's the standard two diligent standard for documents and other papers. In this context this provision is most applicable in the representation context where you're representing someone before the examination division or the collection division before appeals. 10.3 4b has 2 pieces -- one deals with taking positions on documents that are actually submitted to the agency and in that context you may not advise a position that is frivolous. I don't consider that to be a really tough standard to meet herbalist is being able to say something without bursting into laughter. It is the provision and the standard and the document and so that's what you have to follow.

The second piece is a little trickier. It says that you may not advise actually making a submission in and of itself where the submission would be frivolous again or where the submission is intended to delay or impede tax administration. So, making a submission for the sole purpose of stopping collection potentially is a violation of this, depending, again, upon what the rest of the circumstances and facts are. It is also a due diligence requirement under b that you not advise making a submission that either contains or omits information that demonstrates an intentional disregard of the rules and regulations. We see this in the context of collection matters where

people are submitting financial statements that are inaccurate. Financial statements were assets have been left off. Maybe they've been moved elsewhere maybe they haven't been moved elsewhere, maybe you're waiting to see if the IRS can figure it out. All of those potentially hostile to violations of 10.34 10.3 4b. I mentioned a minute ago that under 10.3 4a could not as a matter of due diligence advise or sign a return that contained an unreasonable position and that that was defined as a position that lacked substantial authority but had a reasonable basis and was disclosed. So, 10.34 So, 10.3 4c tells you when a disclosure is with respect to Circular 230 So if you have prepared the return, signed to the return, if you advised the position on the return or you've advised the position or making of the submission because it applies to b and c, and there is a potential that the client like a great penalty it is your obligation under Circular 230 to advise the client of that penalty disclosure or exposure -- and the opportunity to avoid the penalty for internal revenue penalty purposes by making a disclosure on the tax return. That's what the regulation says. I like to say that they can avoid the penalty by not taking the position once you advised them that it is subjecting them to a penalty. I recognize that some clients are bigger risktakers than others. Your duty is the advice. Not to force them to make the disclosure on the tax return. Your duty is to advise them of the consequences of their failure to do so and how they can avoid the penalty by making that disclosure, so once you've done that you've done your duty. As a matter of best practices is not really a Circular 230 requirement. I would say that you would probably want to document that you had that conversation with your client to make sure that if the issue arises in an examination the client is likely to forget that you gave them the advice and that you warned them about their exposure to the penalty. They are apt to instinctively want to blame the preparer. The preparer would be wise to have something in their own files that indicates when the conversation occurred and what was said and presumably documenting the fact that the client said that the client would take their chances. Now keep in mind you can still sign the return because presumably you're telling the client that it's got a reasonable basis because whatever the position is its disliking in substantial authority. So it's going to subject the client most often I would think to a 6662 accuracy related penalty at some level whether for substantial understatement or widgets or valuation issues. So you can still sign the return as long as you got the reasonable basis. And you're in good shape under 10.3 4c if you've advised the client about the need to close in order to avoid the penalty.

The last part of 10.34 is one of people think they understand that most of the time they only remember the first part of it. 10.3 4d says that US the practitioner may rely in good faith and without verification on client information. But -- -- --

You all remember that part and I hear it from you -- I don't have to audit my client. This sort of statement. You're right, you don't. But the But is important because you can't ignore the implications of other information that you have been given whether by the client or someone else. You can't ignore actual knowledge and you have to make reasonable inquiries if the information you are being given appears to be incorrect

or inconsistent or incomplete. So you've got to be thinking about what the client is giving you and saying. The other thing about this that's important is the difference between information or data and actual characterization or decisions. A client comes to you with their tax data where they send it interview on a form and they tell you they paid $100,000 in alimony. As a matter of 10.3 4d you can accept $100,000. You may want to ask for documentation as a backup. That might be your best practice. If you have no reason to think differently about what the client is telling you maybe it's consistent with prior years or it doesn't appear to be incomplete or incorrect for any reason -- you know they're divorced -- you can accept $100,000. What you cannot accept is the characterization of the 100,000 as alimony. Because that's a legal conclusion. It could be child support, it could be family support. It could be deductible or not deductible. Anybody who's paying it wants to be alimony because deductible. Anybody who's receiving it once to be child support because it's not reportable. Not taxable on the other side. It's your responsibility as part of your due diligence to ask the question that can lead to the characterization issues. I had 50,000 in capital gain last year -- well, how do you know capital gain? Maybe some of it was ordinary income. Maybe it is depreciation recapture. You can accept the number in many instances but you cannot accept the characterization. So make the distinction between what is information that your client has that is unique to the client that you can expect to receive from them and trust unless you have some reason not to trust it, versus the determinations that you as the practitioner and the professional need to make about what you're calling that when you put it on the tax return or what you're calling it when you put the deal together, whatever it may be.

The other piece of this is important because people do this a little bit too much -- willful blindness. You have to ask questions. The client has to give you answers. That goes all the way back to the general due diligence provision that says essential you have to know all the relevant fact and you have to know all the relevant law and you have to apply them to one another. If you don't have the questions and you say to the client over God don't tell me that because you to tell me that I'm going to have to give you bad news -- it's your job to give the client bad news if that is what the client is supposed to hear. So, no willful blindness in this area. The next provision I want to cover is one that has been in the circular and the regulations probably as long as any other regulation. It dates all the way back because it's such an important provision and its legal bold the negotiation of a taxpayer check. It was revised in June 2012 to add some clarification. Essentially what 10.31 says is that you may not cash, endorse, deposit into an account that you control, split an electronic transfer, do anything with a refund check or a check written from the US treasury in your client's name. It's an absolute violation not just of Circular 230 , it's a violation of the title 18 provisions and there's a provision in Circular 230 or title 26 that makes it a Title 26 violation for penalty as well. And this doesn't matter -- what you do with the check is not controlled by what your client is willing to let you do. Your client's concurrence in this regard is irrelevant. So even if your client says pay yourself from my refund check you may not do it. Form 8888 if you read the instructions states it was not designed

for you to be able to put some of the money into your clients think account and some of the money into the taxpayers account. That is prohibited. One of the things that the IRS is doing for the 2015 filing season and forward is that if you attempt to put an electronic check into a bank account number more than three times -- the next time -- the fourth deposit -- will be frozen and the check will be issued in paper to the person was named on the front of the tax return and it will be mailed to that person. Be prepared for the fact that the agency is putting other kinds of safeguards in place to save you from yourself with respect to this particular provision both as to the internal revenue penalty and circular 230 violation.

The next provision is one that I want to cover because this is one that practitioners tend to find themselves getting sideways with more often than not and it's one of the bases on which we receive a lot of the referrals from the field. It's one of those agency rules of engagement at 10.51 that I mentioned -- disreputable and incompetent conduct it is titled giving false and misleading information. It essentially prohibits you from participating in any way with your client giving false or misleading information to the Department of treasury -- the IRS. That includes testimony, tax returns, financial statements, any applications you might be filing whether it be for P PTIN or other enrollment -- it includes affidavits, declarations, protests that you might submit to appeals. Anything and everything that you submit to the IRS, you may not participate in presenting false or misleading information to the Treasury Department. We see this often from the field both examine collection. When representatives try to spin the story or they try to obfuscate the bad facts in favor of the good ones. Or worse they make up facts. They know they didn't have the position that really they should of been advising the client about in the first place. So, beware of this one. The client is going to put a lot of pressure on you because of course they always want everything to be deductible and they want to find stuff that they don't have to report as income. The tension between the two of you is that you have an obligation both to the client and to the system to ensure that everything is properly reported as income and everything is properly deducted and properly characterized and deducted and things that are not deductible don't get sneaked onto the tax return and hidden in some scheduler not because more often than not the agency is going to find it. When they do I can almost punish you if you talk to your client the first thing the client is going to say is the devil made me do it. The client will not take credit for whatever went on. Another provision that tends to trip up the practitioners at 10.51 is a 7.

That identifies disreputable and incompetent conduct willfully assisting or counseling or encouraging or suggesting to a client or a prospective client and illegal plan to evade to federal taxes or the payment of the taxes or a violation of any federal law. This happens a fair amount of -- in the collection arena where practitioners try to help their clients. I realize were in a service industry were all a little too vulnerable to the pleas of clients wanted to get help in the collection area especially. Especially in the employment tax collection area -- I just need to more deals and I'm going to get a windfall on this contract shall be able to pay all my taxes and

everything's going to be fine. You can't let them loving my bank account or you can't let them take my assets. The practitioners in an ill-advised will considered average to assist the client will start moving assets, bank accounts, completely close the company and open another one that they move everything into without all of the appropriate documentation and fair market value exchanges. So this is an area where you are very susceptible to your clients please assist them in avoiding most they collection activity for just a little while longer until they can get on their feet. If the terribly dangerous area for you to be in and for you to function in, and we see a lot of these referrals. I just call to your attention the fact that a 7 is there and when we see it we have to react to it and in most instances this kind of a referral will most assuredly afford to some level of discipline.

The next provision is probably the most difficult and confusing provision to apply in all of Circular 230 which is why I like to talk about it. It's a provision that with the exception of lawyers is foreign as a concept to virtually everybody else. Lawyers get the concept of conflicts of interest for the much added to them for the entire time that there in law school, but even lawyers don't always get it right because this is not easy. CPAs don't get the concept talked to them at any level, and of course enrolled agents for licensed by the agency don't ever really get any formal training on the concept until you come to one of my sessions or listen to this webinar. So, let me try to simplify the Circular 230 10.29 is much as possible and I will mention that this is almost verbatim from one of several of the ABA -- American Bar Association -- model rules of professional conduct the conflict of interest provision with respect to individuals. So if you're curious about other interpretations of 10.29, you can actually look at the ABA model rule and see commentary, explanation, and examples in that ABA model rule. >>. His on 10.29 -- there are really two steps that occur. The first is to make a determination as to whether a conflict exists. The second is to determine what you decided you have a conflict what to do about it. The first piece is, when does it exist? This slide pretty much lays it out for you. There are really 2 triggering points. The first is if you have one client whose interests are directly adverse to another client. Partners are now fighting with one another. You've been representing them in the partnership and now they are disputing something that will essentially implode the partnership. They are directly adverse to one another. Maybe they are even suing one another. This would be true of shareholders in corporations. It can be true of husbands and wives. The second part of the analysis is a little more challenging. It essentially says that you may not represent a conflicting interest and that exists when there is a significant risk that your representation of one client will be materially limited by your representation of another client, a former client, a third party, or as you see that I've bolded your own personal interests. So what does that mean? Well, the responsibilities to the other client is not much different than the direct adversity, except that maybe they are not suing one another. Maybe you have a married couple who has separated and so there is a potential for there to be a significant risk that your going to be limited in representing husband vis-à-vis the wife.

A former client -- you can have somebody come in -- let's say an ex-wife, who wanted to represent them by the ex-husband in the ex-husband is your client. Have to determine if the conflict exists. A third person might be somebody who is a fiduciary or a beneficiary of a trust or some other place where the law has determined that you have obligations to third parties. Most often in the fiduciary context. The one that is most troubling and the one where I think practitioners get themselves into the most trouble is the last one which is your own personal interests because this arises probably more than you realize. You prepare tax returns for somebody. The IRS comes in and examines the return. They start asking questions about various entries on the return, some of which you may have advised about, some of which you may have calculated, some of which you may have characterized in some fashion. And you realize that you are going through the examination representing the client which by the way at the initial point in time is no conflict because you have a neutrality of interest. I get that. Both want to beat the IRS. I'm clear on that. But during the examination suddenly the IRS is focusing on issues that you have some responsibility for them being on the return and you started to temper your responses to the IRS because now you're covering your own self. Your embarrassed, you're afraid of a preparer penalty. Whatever the issue may be, in your got you are starting to temper how your answering. Maybe you are putting a little more blame on the client. Maybe you are saying the client didn't give you that information or they didn't give me all the documentation or didn't cooperate. Maybe you are saying stuff like that about the client. You are creating the conflict of interest between yourself and your client by putting your interests in front of the client and that constitutes a conflict of interest. So in each of these instances that I have described you would have to first identify the fact that you have the conflict. Now is what are you going to do about it? You have to do three things. The first one you do a essentially by yourself. Introspective. You don't discuss it with your client initially. You have to determine -- you have to have a reasonable belief in your ability to continue to provide competent and diligent representation to any and all clients who are affected by that, with of interest. So that's multiple partners, multiple shareholders, if the husband and wife whatever it may be, if it's between you and your client, you have to have formed a reasonable belief in your ability to continue to provide Seles -- zealous advocacy and competent representation for the client. And it isn't your subjective I have faith in myself -- it's essentially the general generic legal reasonable person concept. So what with the reasonable practitioner in your shoes think about your conflict and whether they could continue or not?

Once you have determined that you can reasonably have the ability to provide the competent and diligent representation for your client, you have to determine -- and this is not hard because in most instances is not going to apply you have to determine that whatever the representation is isn't legally prohibited. The last piece -- the last bullet is the trick is. Now you have to talk to the client. In each instance you have to talk to each client is going to be affected by the conflict it you have to inform them about what the nature of the conflict is, what the potential for harm in either direction maybe,

what the pros and cons are with respect to that representation continuing, you representing everybody involved with the conflict you have to give them that advice and that information, and then you have to secure from each affected client, in writing, a waiver that says they consent to your continuing representation, notwithstanding the conflict that you have explained to them and acknowledges that you have really explain it to them and they understand it. That documentation has to occur whenever the conflict arises. So it may not occur at the beginning of the transaction or a relationship with the client. Not every husband-and-wife that come in to see you is going to get a divorce someday. But the minute you realize that the conflict has arisen and you've gone through your conflict analysis then you have to go through the what do I do about it and if you determine there is a conflict at the end of the day, there's going to be a writing if you're going to continue with representation that says that the client -- each of the clients has consented. In situations where you have -- let's use husbands and wives -- the most obvious a situation -- where you have husbands and wives it is not permissible for you to represent one or the other unless they have both consented to that representation. So it's a little more awkward than you might think because if they're not in accord -- if they're divorcing, they're disputing property whatever it may be -- one may not be happy that you will continue to represent the other. But the other piece of that would be that you have to have already determined that you don't know secrets about one of the other that you're going to be able to use against them. So let's say the husband says she's got nothing. You don't need to represent her. Represent me. You know some things about the wife that may be of assistance to the husband in his dissolution process with her. So you have a problem because you can't tell her secrets to him. But you owe him absolute fealty. You can't diligently and competently represent him if you are going to keep her secrets and vice versa. So you really have to spend some time thinking about the complications when you get into these scenarios. I recognize they are not easy. They're very complicated. And even lawyers don't always get them right. Don't the shy about asking for help. When I was in private practice I had any number of CPAs and enrolled agents who would use me as a consultant when they would run into these situations to get an objective third party to make sure -- make some determination with them as to what they had on their hands. It's a lot safer to do that and at the end of the day to find out that you didn't do it thoroughly enough.

These writings that you obtain from the client under 10.29 have to be retained for 36 months after whatever the engagement that you are involved in has ended and they must be produced to the office of professional responsibility when we ask for them. So make sure that you keep your records square as well.

The next provision that I'm going to cover is another of the due diligence provisions and this provision is brand-new. There was a 10.37 but this has been rewritten so dramatically that I consider it to be brand-new. It is the due diligence provision for the giving of written advice. Written advice is well settled -- anything in writing from a Post-it note to an email to a fax or a letter to wait there were -- very formal opinion. It is all written advice of one sort or another if

the tax question has been asked. And the thing I like about 10.37 is it is a very principles-based very practical very flexible provision. So there's no checklist involved. There's nothing that you have to that is black and white, frankly. It's a very amorphous series of reasonableness concepts which is, I think, much more in keeping with ethical concepts. 10.37 says that when you're doing and giving written advice you have to make reasonable efforts to determine the relevant facts, you have to reasonably consider those relevant facts and you have to make reasonable factual and legal assumptions in situations where you don't know actual facts.

You may not rely -- representations and statements or agreements or anything else being given to you or told to you if you know or should know that the information is based on incorrect or incomplete or inconsistent representations or assumptions one of the things that we see in 10.37 tie some of the language from the due diligence provisions into one another. So this concept I already discussed with you when I talked about 10.3 4d. It is appearing again here the effort that we made in the latest revision in circular 230 was to try to bring some consistency to the definitions and words we are using. As we move from one provision to the next words would continue to mean the same thing. They mean the same thing here as I discussed in 10.3 4d. 10.37 goes on to say it's a part of your due diligence and you have to apply the applicable law to the relevant facts. There is part of my discussion with you from 10.22 -- the general due diligence provision where I talked about round facts and square holes -- this is when you are doing written advice. You may not play audit lottery with your advice and what I mean by that is you may not give advice that is based on an assumption that whatever the position is will not be found -- that the return will not be examined or if it's examined it will be noticed. That are all versions of audit lottery. And I know your clients ask you those sorts of things all the time -- what are the odds all get caught if &, Or what are the odds that the IRS is going to find this if they examine it? What are the odds the IRS is going to examine this up I take this deduction? These are all versions of the client asking you to play audit lottery with them. You are not allowed to do that in the context of your due diligence obligations in giving written advice. You may not take those matters into account. What you may take into account is the opportunity that you might be able to resolve a matter in some settlement fashion because there is conflict as to interpretation of the law. It's not going to apply to facts, necessarily, but there is some wiggle room in terms of positions that can be taken. And so you might be saying to your client, well, if we get challenged -- we might get challenge. If we get challenged the law is unsettled and so I think it would be weighing their hazards of litigating and we would be weighing our hazards of litigating. There would be some resolution of the case. But to suggest there is a 50-50 chance or there's a 2% chance they'll be audited or whatever -- that's audit lottery and you don't want to do that with your clients. When I was in private practice my clients used to ask me these questions and my answer was always the same -- what are the odds of my being audited if -- answer was 100% when you are. And that's really the only right answer to give because there is no other statistic that you can give your client associated with audit lottery that is going to be accurate

or based on anything scientific. You're just licking your finger and sticking it in the wind. That's why it's called audit lottery. Try to stay away from doing that.

In the written advice area you may rely on the advice of others -- where have you heard that before? 10.22 as the safe harbor -- it's okay as long as the advice is reasonable and your reliance is in good faith. Considering all the facts and circumstances. Your reliance is not going to be reasonable if the person on whom you are relying for the advice is either -- you already know isn't reliable, or you know that they are incompetent or unqualified to be giving you the advice or that you know that you have an unresolved conflict of interest under 10.29. Where you might see that is a preparer has prepared a return now under examination and the taxpayer has said they want someone else to represent them and the preparer is trying to give you the pitch for why their position on the return is correct. They have a conflict of interest with the client and they had their own self interest at heart. Telling you about why they did something on the return or why it's right or how to defend it. So you have to be cautious about what is your listening to and which are taking advice from. The written advice provision applies to all federal tax matters that is a change of the old refer to all federal tax issues and we changed it to federal tax matters. It's perhaps for some people a semantic change without a difference but for others I think it probably makes a significant difference. It means what it says -- all tax matters. As a mentioned when I talked earlier the reasonable practitioner standard is what's going to apply when you are dealing with conflict of interest it will apply the due diligence provisions as well. It is an objective determination. Would your peers in the community doing the same kind of work at the same competent level as you -- how would they be reacting to this. Which is why, Franco, it's good for you to consider consulting with a colleague about their reaction to a particular matter. Because now essentially you are seeking out the reasonable people in the community what they would think about a particular issue. So, this is always as is everything in circular 230 facts and circumstances oriented. That's why we are giving black and white checklist advice. It's going to depend on your relationship with the client -- the complexity of the issue. Your sophistication this is why the provision is intended -- it's meant to be practical and flexible.

There are a couple of exceptions and 10 point 10.27's for government submissions were taken positions about a piece of legislation -- tax legislation. Or a regulation being written. The provisions don't apply in that context and there is also an exception for educational presentations. The educational materials were never intended to do marketing or to be relied on in that context by anybody. They are just being used like with this webinar. [Captioners transitioning]
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In the version of Circular 230 prior to June of 2014 there was a provision at section 10.35 that was called the covered opinion role. The covered opinion role at the time it was at the time the longest regulation in the Circular and the most difficult to read the most convoluted the most filled with definitions that were very specialized.

That had a big checklist. Essentially designed for the giving of written advice associated with what was called covered opinions

being those kinds of opinions that were considered by the Internal Revenue Service to be aggressive

tax shelter oriented efforts to market to various kinds of various tax shelters and schemes designed to try and control the traffic and advice given in the area. It'd been in Circular 230 for about 10 years it was put in , in 2004. As part of that covered opinion rule at the very end of the provision, there was a requirement to make disclosures to your tax player -- taxpayer client under certain circumstances one of the circumstances was if you are giving the client or taxpayer advice that did not meet a more likely than not level of determination of success on your part for whatever the position was. A very high standard. At that point, if you had concluded that the position you were advising did not reach a more likely than not standard level of assurance, you had to make a disclosure to the client that they could not rely on that advice for penalty protection. Because in the tax shelter arena, a taxpayer is subject to a 6662 penalty in a tax shelter context if the position, the transaction is at

the standard is less than more likely than not. They have to be above more likely than not to avoid the penalty. And so you had to make sure the client understood that you were giving them an opinion that did not reach that more likely than not provision. If that sounds confusing, you should've should've right to read 10.35. So there was this disclaimer that had to be made. Well, something happened in about 2005 and 2006. People started to pick up on that disclaimer. Mostly I think it has big a law firm's did it and big accounting firms did a. And then the second tier law firms and the second tier accounting forms dated and virtually every tax practitioner was doing it and what I mean by doing it is they were all putting a disclaimer on their e-mails in particular sometimes on their fax's but mostly on emails that started out with the praise, pursuant to Circular 230 or pursuant to Internal Revenue Service regulations or as required by Circular 230 some introductory sentence. Then it would go on to say whatever I have just said to you in this email cannot be relied on for penalty protection. I am sure many of you got those as invitations to lunch and at the bottom will would be this disclaimer. Everybody referred to it as the penalty protection disclaimer. Or jurat . One of the things we did as of June 4, 2014 is we we have rescinded the old 10.5 covered opinion rule and along with that any requirement that may have existed for a disclaimer with respect to penalty protection.

For those of you out there listening to this webinar is still happen to have e-mails that contain that disclaimer

and you have forgotten even why it was there or how it started, I am here to tell you not only is it not needed, but I would really appreciate it if you removed at least the beginning phrases that blame the appearance of that disclaimer on your e-mail on the Internal Revenue Service Circular 230, the office of professional responsibility, Karen Hawkins. We don't have anything to do with that disclaimer anymore. We have rescinded the requirement. If you want to put a disclaimer on your emails of some sort that is entirely up to you that just don't to blame it on the agency or OPR because we no longer think it is unnecessary. In fact I never thought it was necessary. So

that's what's not here on the PowerPoint slides. What is here is new 10.35 8 has we used to the number and it's labeled competence. And it is really one of the provisions in the Circular that I think states the obvious but sometimes the obvious needs to be stated. 10.35 effectively says that you must be competent to practice before the Internal Revenue Service. It's kind of a novel thought. Competence and competent practice requires whatever it the appropriate level , given the facts and circumstances of the matter is, associated with your level of knowledge, skill, thoroughness, preparation , to provide this service for which you have been engaged. So again, this is a very flexible, principles -based concept for people to just be pane attention to in the course of doing their work. This is a message to those of you who think you can buy tax software him but it do all the work. That you won't be competent if that is how you conduct your practice. This is for those of you who think that you can shoot from the hip and pick some choice of positions that sound good whether they are actually supportable under tax law or not.

This provision is for you.

You can be competent because you have already had experience in a certain way bat lets you immediately know what the issues are associated with a particular fact pattern. You can become competent so that you can go into the research , take a class, you can read or you can hire or consult with competence so that you can bring a subject matter expert in, you can call someone you know who is knowledgeable in the particular area on the phone and ask for 30 minutes of their time, whatever it may be. So there are a variety of ways that you can be competent but you don't have to have it all wrapped up into you all the time. None of us are totally competent at all points in time. But we have ways of getting competence. And more importantly, you have to recognize when you are at competence. So that you can either get competent or you can send the client to someone who is. So there is a responsibility here on -- unspoken that only do you need to be competent but you need to recognize your areas of weakness and make sure you are getting your client appropriate representation and advice and some other fashion if they can't come from you. Okay so , the next provision I want to tell you about is a new addition to an existing regulation. And 10.82 of Circular 230, the office of professional responsibility is authorized to do what's called expedited suspensions of practitioners who have been adjudicated in some other third-party forum to be unfit to continue to practice. So, these are the sorts of things where a lawyer might lose their license from their state , a CPA might have their CPA certificate revoked by their state, anyone of these or an emerald agent might might be convicted of a tax crime. These are all recited in 10.82 as precursors for our use of this expedited suspension process. And the expedited suspension process proceeds somewhat along the lines that I described of our regular process, just faster. So we are able to move the process and shorten everything that goes on. So there is still an opportunity for a conference, there is still an opportunity to argue your case, there is still an opportunity to argue why we should settle at some other level besides a suspension. So, you have have those opportunities. We just give you a very short period of time in which to have them. So that we can move forward. Keep in mind

in virtually every instance , some other adjudicator has determined already that practitioner is unfit. They have already lost the license, they've already been convicted of a crime. So, work or not wanting to waste a lot of resources, but we are mindful of the fact that you are still entitled to notice and opportunity to be heard before we proceed further. On very rare occasions, practitioners have have in fact convinced us that the adjudication by the third-party state or court is not one that we should treat as seriously and we've being able to negotiate something. But more often than not, these challenges are relatively unsuccessful. Under 10.82.-- there has now been a new provision added at 10.82 (b) 5. It is a provision that says that the present -- practitioner has failed to file the last four out of five years tax returns or has failed to file the last five out of seven returns required more annually and by that I am talking about employment tax quarterly returns , excise tax court or the recurrence -- returns the quarterly tax filings that may occur four out of five individuals five out of seven employment excise tax type returns . F that fact pattern exists, OPR may use its special authority under 10.82 to bring an expedited proceeding to suspend that practitioner. Because there has been a regulatory determination the anyone who has failed to file four or more years worth of tax returns in a row, or five or more quarterly returns in a row , has demonstrated their lack of fitness to continue to practice in the system. So, this is brand-new. We have, since June 12, we have actually issued a fare number of these because as I mentioned earlier, we do have more practitioners than I like to think about who are noncompliant with their own filings. And we are using this procedure fairly liberally to avoid having to waste a lot of resources on along form of hearing and due process.

We're using the short form. So I just want to give you a heads up. I told you the beginning when we get referrals, we check your compliance. This will be part of the checking. If we see there is an extensive noncompliance history, we will be deep proceeding much quicker than we have in the past to remove that petitioner from practice. So, I think this is the last provision I am going to cover it with you and it is another one of those that appears in the 10.51 disrupted double and incompetent conduct sets of regulations and subparts E of the Circular. And it is kind of a sleeper provision that I just like to call people's attention to to number one and number two, it contains some helpful definitions that I like to point out to people, they can refer to for understandings of language in other parts of the Circular. And that is 10.51(a) (13) that talks about it being disagreeable or incompetent conduct to give false opinions if you do that in either knowing or reckless or grossly incompetent way. It also makes it disreputable and incompetent conduct to give intentional or recklessly misleading opinions. Now again, we are talking about whether you are giving them to your client or you are giving them to the treasury, this is the general due diligence provision given new obligations in both directions. It is also distributable and incompetent to give or have a pattern of giving incompetent opinions. So if you are doing a lot of opinion were, this provision applies in addition to 10.37 applying as to the due diligence this provision applies to both oral or written opinions. So, is a much much broader based provision. And in 10.51(a)(13) , there are

some definitions. One of them is the definition of a false opinion. And it essentially describes the false opinion as being one that contains knowing misstatements of fact or law, that asserts unwarranted positions, the councils are assists in conduct known to be illegal or fraudulent or that conceals matters that are required by law to reveal -- be revealed. So again some of these sorts of things I read I interpret to mean we can see these in some of the oral advice giving that is done in some of the controversy areas and representation during examinations entering collection matters. Where there is advice being given about how to handle presentations of financial information, for instance. So this will also apply in addition to 10.34(b), that I discussed with you. There is also a definition of what constitutes reckless conduct. And the provision essentially says that it's highly unreasonable omission or misrepresentation that involves an extreme departure from the standards of ordinary care. There again the original measure is the reasonably prudent practitioner and recklessness would constitute a deviation to the extreme from the ordinary , reasonable practitioner standard. Gross incompetence is described as gross indifference or grossly inadequate preparation or consistently failing to perform your obligations to your clients.

Again, there is that dual expectation

if you have obligations to your clients you have obligations to the system. And in all of these instances in his oral and written opinion giving areas, patterns are going to matter. My experience in the five 1/2 years I have I have been with OPR is, it is very difficult to prove conduct violations with a single instance of behavior. And so we are always looking for patterns of behavior. We get those patterns either because multiple revenue agents or revenue officers have the same experience with a practitioner but we also get them because we receive multiple referrals that are one-time instances from multiple field personnel and we are able to put them together and see the patterns. So most of the time when we are pursuing someone that we think is in serious need of disciplinary consideration, it's because we have seen a pattern that suggests to us that that individual has either no regard or significant disregard for the rules that have to be followed in order to ensure the integrity of the tax administration and the smooth and efficient running of the tax system. So this last slide that I threw in is really a reference for you all to have. It contains links to some of the key documents that I think are important for practitioners to know about. The first one is a link to the most current version of Circular 230. The second one is an invitation, in some respects, because that's how you would get to subscribe to the OPR bulletin. And we periodically publish the bulletin . And it just gets pushed out to as many of you probably subscribe to IRS news. The bulletin is similar, it's just OPR*permac so, whenever. So, whenever we're putting something out publicly, if you're subscribe to our bulletin, you'll get it. People who are already subscribed to our bulletin went the new Circular 230 came out in June immediately -- needed a new version of their very own to work with. The third bullet essentially describes Circular 230 most of the provisions in subpart Y of Circular 230 in plain English. Seven is just too much of a slog for you to read through Circular 230 subpart B all of the 19 ethical provisions, this was an effort to put in plain English what those provisions say so that is another place you can go

to get a better understanding of what each of those provisions might require. The next to the last bullet is a couple pages that we put out that help to explain to practitioners with their rights and responsibilities are during a disciplinary case. So it essentially is a plain English discussion of subpart -- Subpart D of Circular 230. Again that is I told you not to read Subpart D but if you want to read the couple pages against you I think a pretty decent explanation of how it all works. The last one is a four-page document that we give to every practitioner whom we either suspend or disbar , which essentially tells them what they may and may not do with respect to practice before the Internal Revenue Service, during their period of suspension or disbarment. So that they maintain some opportunity to stay out of trouble with us during their period of time when they come to petition back into be reinstated. We're now finding that they have run afoul of the provisions of attempting to practice. And the very last slide is just where you can send anything in writing that you want to make. We do get referrals periodically from practitioners about people that they think are violating the Circular. That would be the address that you would use to send something to OPR. So, this concludes the video portion of the webinar. I hope you found that the presentation has been both helpful and informative. I appreciate you're watching. And now, let's begin the Q&A segment.

I am Gerry Kelly Brenner with the Internal Revenue Service and as Director Hawkins mentioned, we hope you found today's webinar helpful and informative. I am here today with director Karen Hawkins of the office of professional responsibility, who is joining us for the Q&A portion. Director Hawkins, thanks so much for making yourself available today I know how much the practitioners appreciate hearing from you directly of course. Especially since this is your last national webinar before you retire.

Yes, I am happy to be here.

Thank you . Let's find out what important questions we have received. Director Hawkins, the first question has to do with a practitioner who was wondering about his responsibility now that he has gotten a new clients. He has found some things on this return. I prepare corporate taxes for a new client this year and the prior CPA always had the client sign a form 2848 of course power of attorney each year for that year. During the course of due diligence and looking over the prior CPA's work I discovered that for some years through tax year 2013, the CPA has had the client's federal weekend -- refund direct deposited into their, CPA's bank account. It appears they use part of the refund to pay state balance due. Over the years when the client acquired -- inquired about the outcome of the returned they were told everything is okay no additional payments were needed and there was just an end of the conversation. I advised the client that I should review at least the past three years returns and amend as necessary and I was told that the client , I also told the client that the CPA should not have received any funds directly from the IRS on their behalf. The client does not want to rock the vote with the IRS nor report the CPA to OPR. This practitioner is wondering what their responsibility is as an enrolled agent?

This is a frustrating situation for both you and me. Because I would like nothing more than to know who that CPA is and have them referred to my office, even if it just involves us giving them a wake-up call about what their duties and responsibilities are. The CPA was clearly in violation of 10.31 , by taking the clients refunds. I think extremely dishonest and not advising the client. Although I would caution you that if the client had state obligations that the CPA was taking care of, the client may be for his or her own purposes, misleading you about how much they knew about what the CPA was doing. With respect to your own personal obligations, I would say on your Circular 230, there are none. You have no obligation to reports the wrongdoing or the misconduct of any other practitioner as a requirement under Circular 230. I would certainly encourage all of you practitioners who care about past integrity, who care about the system working properly, that if you see something and you think it is a violation, and you can document it well enough for OPR to figure out what your concerns are, then consider making the referral. When your client tells you that they don't want to be involved with that, you absolutely must respect your clients wishes an occupant involved in what would end up being an inquiry by OPR because the client would be contacted. So, you are in a bit between a rock and a hard place but the good news by not reporting the CPA to OPR you are not in trouble with the.

Great to know. It is a clear violation of 10.31. But, they don't have any obligation or requirements. If the client is requesting not to have a referral made, then they have to abide by that.

Correct.

It great to know, thanks. The next one has to do with the rights and powers of an enrolled preparers. Have the rules changed regarding and unenrolled preparer handling SEP 2004 client to have their original return done by someone else? I understand that in the past 8821 third-party form must be submitted or two at the if it is a joint return for one each taxpayer. I had heard that only and unenrolled -- a person with the AFP annual filing season program affiliation and only on returns that they originally prepared are able to do this can you clarify?

So I actually took this question to answer because there is misinformation and a and I wasn't sure how brought it was. The 8821 gets you no representation rights whatsoever. You are misinformed to think if you want to represent someone in an examination whether it be a letter form of examination or office examination, you must do that through 2848 so I assume what you are really doing in the CP 2000 area is requesting transcripts and other kinds of documentation the IRS would have in order to assist the client in figuring out why they got the CP 2000 notice. The only form you can use to actually represent a client for the Internal Revenue Service is the 2848 and those rules have not changed with respect to unenrolled unlicensed return to Paris and in fact in some respects they won't change. Here's the clarification a difference. Through the end of this year, a return preparer otherwise unlicensed and unenrolled may represent before

the 23rd it may represent a client for the Internal Revenue Service if they both signed and prepared

the tax return that is being examined. They may not, under any circumstances, represent a taxpayer for whom someone else has prepared the return or signed that return. After the 31st of December of this year, a return preparer must either be a record of completion holder under the annual filing season program or they can continue to be an unlicensed,

unenrolled repair. The difference will be only the AF FP people will be able to continue with those limited represent should rights so the kind of representation rights you have IE you can represent

on returns you both prepared and assigned will continue to exist after December 31 but only for people who come in and get the annual filing season program record of completion. For people who choose not to come in and get the record of completion, they will be able to continue to represent only with respect to returns they prepared and signed before the end of this year. And that is all I want to say about that because that's really a return preparer office issue not mine but I did feel I wanted to clarify for you.

We appreciate that. People do get confused as to what OPR and

RPO have jurisdiction over. It is important for them to realize that they are enrolled preparers until the end of the calendar year until December 31, 2015, that they would be able to represent through a 2848 of course only the ones they find -- side to prepared the returns they sign up with her beginning after January 1, 2016, if they still want to have that limited representation than they are going to need to pass and get a record of completion.

Also let me make the pitch. You all know I have been here for six years. When I started OPR actually had responsibility for the an enrolled agent program. If you all are thinking about getting the record of completion, please think a little bit harder and consider coming in and taking the special enrollment examination and enrolling yourself as enrolled agents. You will have far more rights with respect to your client. You will be able to represent the notches before examination which is what you are restricted to now but you would be able to represent them and collection matters and be able to take a protest into appeals. Clearly the enrolled agents status is by far the better one if you are going to take a test good Lord takes be a test and get the full credential. If for some reason you can't just manage to do that at least into next year, certainly get the annual filing season program record so you can continue to represent your clients for whom you are preparing and signing tax returns.

A good pitch I know that is in their best interest that we appreciate that, thanks. The next question, director Hawkins, has to has to do with form 2848 and rulings and Circular 230. This says, I was informed during a call to collections and after submitting my 2848 that the jurisdiction section of the 2848 should indicate IRS or Department of treasury not just the state practiced and. I did not see this change in Circular 230?

Okay the writer of the question did not identify with their licensure statuses but based on what they are told I am guessing they are an enrolled agent. If you are a CPA or lawyer, then you would list the state licensing you have because the state is the one who is licensing you. The issue that came up in the most recent 2848 is that enrolled agents are not licensed in their state. They are licensed by the federal government's. They technically aren't licensed by the Internal Revenue Service. So the instruction actually tells them to put IRS or Department of treasury . We have gotten some feedback from a number of practitioners that suggest that makes them very uncomfortable to put that on the power of attorney for fear their clients misinterpret that to mean they are working for the IRS. So we are actually reconsidering that instruction. Fidget for the time being if you are an enrolled agent or

in the jurisdiction section you can write EA , you can write IRS at that does not bother you. You can write Department of the Treasury but putting a state in there is not correct.

If the instruction does change, how will they be notified of that?

The IRS always puts out stuff about the changes and something as important as the 2848 so that would come out that way. If you sign up for the listserv I did my advertising for at the end of that webinar, we would push that information out to you instantly.

Okay , perfect. Another way they would be able to get the information timely us through your listserv. That is important, thanks. The next question has to do with what constitutes practice. What a signed power of attorney constitute practice?

It depends on what you do with it. One presumes when you have a power of attorneys signed by the client you intend to represent them before the Internal Revenue Service , that is why you had them sign the power. As a technical matter until you put the power of attorney into the system, and come forward to represent the client, you aren't doing anything this of the they Internal Revenue Service it constitutes practice better just by signing it doesn't do the job they actually have to submit it and of course technically represent the client as well.

Right. I am aware of a lot of practitioners and a lot of them seem to be CPAs who think it is a good idea to have their clients signed Powers of Atty. every year with the proper tax returns. As a technical matter I suppose there is nothing I can point to that says that is wrong but I think it is a really bad idea. And it is probably too long to be on the phone to let it be said I think it is a very bad practice. The client may not want you representing them you made a presumption that may not be the case when it finally arises you need to use the power. The client should date the power of attorney at the time they sign it as should you and that might mean that power is four or five years older for the IRS comes in and I suspect the IRS would question the age on the power of attorney at that point in time with good cause.

Absolutely. The next question is, who is covered under the form 2848? The way this is worded, you don't have to be an EA or CPA to represent a taxpayer under 2848?

You can be a lawyer by the way you can be as I mentioned in the response to the earlier question at the moment you could be an unlicensed unenrolled preparedness both prepared and signed the return being examined and you may only represent before an exam. After this year you could be a record of completion holder and you can have same limited practice right. There are also provisions in Circular 230 that provide for it limited practice the context of full-time corporate employees, partnership employees, direct family members , those kinds of relationships. So there are a lot of other different kinds of people that can file 2848 in order to represent but most of those situations outside of the EA , CPA and attorney groups are limited in some context and the 2840 it would be looked at very carefully for that purpose.

I think a lot of practitioners are either confused or have questions or think somehow the enrolled agents form is the ADA 21 and that they are not entitled to represent in any capacity whereas you are mentioning and clarified yes they do have limited capacity.

The ADA 21 is not a a representation form. It is something I get a little frustrated with the people inside the IRS not understanding. The ADA 21 only allows the representative to receive information from the Internal Revenue Service because the client has authorized the IRS to send that information. The 2840 allows representative, the practitioner, to argue and defend and dispute adjustments and changes the IRS wants to make to a particular tax return or submission that the taxpayer has made. Those are two big distinctions of those two forms.

Yes, very big distinctions thanks for the clarification. The next question has to do with the practitioner's personal record. Can you give me an example of when the reprimand becomes part of my personal record?

Always.

Okay well that is --

I assume you mean part of your record for practitioner purposes with the office of professional responsibility? If we have sent you a private reprimand, not a a public censure, a private reprimand, those records are maintained in my office and the records provisions of the law for OPR authorizes to hold onto those records for 25 years. Now I wouldn't freak out too much about that because the reality is I was after about five, six, seven years if you have not done anything else that warrants a reprimand, we wouldn't, we wouldn't waste our time pointing to something that old as for instance a pattern of behavior. But if you get a letter of reprimand from us it becomes part of your OPR file .

Import and if they get several of them, there may be a pattern.

Exactly.

They probably have another level of discipline they are facing .

Thank you. The next question has to do with disclosure on emails or disclaimers you are maturing -- mentioning the requirements of the speaker been rescinded the practitioner still wants to know what disclosure if an emaciated the written on every e-mail that goes out to the office through -- from a CPA or attorney?

I don't really care what you put on your e-mails. That is a best practice for each CPA and attorney to decide on their own. The best I can tell you is what the webinar said. There is no disclosure or disclaimer required , or for that matter, appreciated, in connection with the Internal Revenue Service. So attorney for instance will put disclaimers on their emails that address attorney-client privilege and confidential information. I have seen disclaimers on e-mails from CPAs where there is
a reference to confidential information they of course don't really have any meaningful attorney-client privilege communications with clients. The same with enrolled agents. That of the is required by Circular 230 for any purpose.

Yet we still see them come into.

I certainly do, yes.

Yes. The next question is, who can prepare and file form 2848 a? If an owner of attacks preparation company has employees who are seasonal and the client with the prior year return is prepared by one of those seasonal employees and the company needs to contact the IRS on their behalf because of a letter that comes in and they sign a form 28 giving the company or another individual with the company authority to speak with the IRS concerning that return, why is that 2848 not accepted by the IRS unless it is the actual preparer , seasonal preparer who is contacting the IRS?

Okay so I've sort of cover this a little in more depth earlier. So I am not going to belabor the point. The rule is, if you are not an attorney, CPA or enrolled agent, you may not represent a taxpayer with respect to a return being examined that you did not prepare and sign number one. Number two, companies can never act as powers of attorney powers of attorney are individually -based so the IRS would never accept Joe blow's company as the representative. And if the individual who is on the power of attorney is not otherwise CPA, attorney or enrolled agent and they did not prepare and sign the return, they may not represent. That is the rule and it has been the rule for almost as old as I am. And since you know I am retiring you know that is a long time.

So if there is a CPA enrolled agent or attorney in the company and that person individually signed the 2848 to represent them the IRS should be --

That works just fine I would not even imagine either of us would not accepting it.

It may have been another preparer that possibly not one who is a CPA and enrolled agents. A fib the question coming from a company that would routinely hire unlicensed, unenrolled preparer so I expect that was the problem.

Probably was. Thank you. The next one has to do with ensuring ALJ's or administrative law judges are qualified. If not from your agency, how do you ensure that ALJs are qualified to judge practice?

So all ALJs are civil servants. They have to take a very complicated, very challenging examination that is given on a very rare basis so they are selected federal government wide and they are assigned to agencies to work. Most of them and up and agencies where they have some legal expertise. They are all lawyers. Treasury has opted not to hire its own ALJ so as you heard me say, we do do get them from other places. I can't do anything about the initial qualifications of an administrative law judge. I get what I get when I contract with the various agencies out for their services. If I don't like the answer and ALJ gives me and I think he is legally wrong or has viewed the facts differently than I think he up, my option is to appeal that decision up as I described in the webinar to the Treasury Appellate Authority who will have knowledge of tax law and will be able to reverse the ALJ. So, until treasury decides there are enough cases that require them hiring and pane their own LA -- ALJ I think he will continue to see OPR using ALJ's from other agencies and I would add right now, we're using ALJs from the United States Coast Guard and from housing and urban development. We have not had a case before had -- HUD yet but I can - them working with the Coast Guard now for a couple of years. I will say I think they are some of the finest judges we have had our cases before and their lack of tax law is not relevant because think about this, we are arguing tax law, when we go into these cases. We are arguing ethics and behavior in context in the context of specific regulations and these guys get it and they are very good at it.

I'm sure even with the Coast Guard their ethics are required as well they understand the concept.

Exactly.

And she said you always have appeal rights too. The next question has to do with when violations get reported. If I am approached by OPR with an alleged violation and as a subsequent discussion we agreed the violation did not actually happen is it still reported as a bulletin? In other words, doesn't get reported in any case of OPR contact or only in cases of violations conceded by the practitioner?

The only thing that gets reported are actual dish -- disciplinary cases. Keep this in mind. On an annual basis OPR gets between eight and 900 case referrals from all sources I told you about in the webinar. And on the same annual basis we dispose of between eight and 900 cases. Of those eight or 900 cases we dispose of, more than 70% are closed

with soft letters, soft touches, closing without closing without sanction, without action,
lack of jurisdiction. None of that gets reported and he placed the only things that get reported are censures, suspensions, disbarment, monetary sanctions. A private reprimand will not get reported in the IRB internal revenue bulletin.

It has to be pretty bad to really be able to get reported.

Well yes you have to be seriously disciplined which is appropriate. I don't think we should be outing practitioners who have had that day.

Very true not trying to put practitioners out of business.

Absolutely not.

Thank you. The next question has to do with who grants authority. It says, who grants authority to practice before the IRS? Is at the IRS, OPR or treasury?

Again, it depends on who is asking the question. Attorneys and CPAs by statute are authorized to practice before the IRS without any additional licensure activity. Enrolled agents are licensed through one of two processes. They either taken examination and submit an application and the return preparer office processes all about or they are former employees, they submit an application and asked to be waived out of examination. If they have sufficient experience
, employment experience in areas that are required to practice under Circular 230 they would not have to take the examination. The return preparer office would make the determination about that. In the appeals of enrollment
come to OPR. We are the ultimate decision-maker but RPO does the preliminary deciding.

Sort of a depends upon [Multiple Speakers] may have. The next question has to do with final agency divisions -- decisions? This says, Director Hawkins mentioned FAT 's the final agency divisions are available on the OPR webpage at IRS .gov however when I went to the site today, I received this message that they are currently under -- currently unavailable.

Right. This is a little bit awkward, but I think you guys should all know about it. After the webinar was stunned, actually quite a long time after the webinar was done, we concluded that there were some issues for us about the way we were putting cases on the website and how much redaction we were doing with respect to the cases. So we have pulled everything down in order to go through the inventory of cases that were posted and make sure we have properly put them up in a way that does not make improper disclosures under 6103. I was hopeful that the project would include before my last day at the IRS, which for those of you who don't know is the tenth of July,
I am continuing to be somewhat optimistic we will get some of them up before I leave. I am just not sure we will get all of them up for relief but the goal is to get them all up at some point. We are just

making sure that we are doing things properly I would say if you are not currently subscribed to OPR's listserv, get yourself onto that listserv because when we do finally start reposting them that is where we would start notifying everybody that the FAD's are backup.

At this point is there anyplace else they can access them or at this point the whole program is on hold?

There is no other place for they can access them. We pulled them down for a reason.

Okay. Good to have the life Q&A with the webinar so you can update everyone to the status absolutely. By the way I just wanted to clarify when you talk about OPR listserv
regarding talking about you subscriptions available on IRS .gov?

Yes recall at the listserv in our office so I get a little casual about that but yes it is the sign up for the bulletins.

E subscription good to know otherwise they may go out looking for OPR listserv and come back to us and say where is it I want to be able to subscribe. Good to know, thank you. Another question has to do with one form 2848 can be filed? If a client states he has not filed for several years can a form 2848 power of attorney be filed to open their case I applied for a 2848, client received the 2848
application back with a note that states because no returns have been filed the 2848 was wrong and I should be filing a 8821 instead.

That was a bad idea. You are using a 2848 to represent the clients. If you have nothing to represent yet but 2848 is not the proper form. If you are using the 2848 to try to get records the IRS might have about the client's income so you may help them construct the returns, then the 2848 -- ADA 21 was indeed the right form to use. Usually, I am giving you a little legal adviser but usually people who are representing non-filers, if they are concerned
that the individual will be a subject of criminal investigation for some reason they will send a letter that advises the client has now retained them to prepare the returns and that the returns will be put into the system at the earliest possible moment and you just begin to prepare the returns. You don't need to file a power of attorney ego and the returns are finished , you should not be filing with a power of attorney just put them in the system. There is a box on page two about discussion of the returns for mathematical purposes you can check with your client approves , but putting a 2848 and at this stage is way premature.

Maybe too some of the questions we received today, this may be a practitioner who just automatically prepares the 2848 for all of their clients in there for and there for all of a sudden was surprised when this one came back.

That idea .

Thank you for clarifying that. The next one has to do with supporting documentation. Does the tax preparer need to trace the supporting documents to prove the numbers for client provides a profit and expense statement in writing related to rental property?

This goes back to the discussion in the webinar on 1034 . Of the client is presenting in a reasonably professional form using QuickBooks, some other kind of spreadsheet or they have clearly got something they are working from to come up with FP&L, you probably feel comfortable accepting what they are giving you. The reality is that unless the client has a bunch of rental properties and really knows what they are doing most clients don't know how to maintain records and you would be doing them a real service if you show them how . One of the ways to show them how is to suggest they show you what they are using for supporting documentation so you can clarify for them whether that is going to be adequate or inadequate if the IRS ever audits for tax return. Then you can give them the advice they need to do a properly going forward. You can be far more comfortable after that , what they are giving you is correct. If it is a point in time they give you their profit and expense statements

and there is any reason for you to question them, then I think you do need to look at supporting documentation as a matter of Circular 230 contact. Otherwise, I think this is mostly a best practices behavior.

The next question is similar, is it correct to keep copies of Social Security cards, IDs, proof, proof of residence of a taxpayer and dependent including their birth certificate is that proper to keep in the tax payers file?

It is not a bad thing to do as a matter of fact I think it is probably particularly if you have EITC clients with the IRS may want to see whether you ask those questions and how you satisfied yourself about the dependencies and what not, my only concern here is that is really confidential information and clients sometimes get really nervous about it. So I would say if you are going to keep that kind of information you need to have a really good record keeping system in your office with these kinds of documents are kept under lock and key so they can't be accessed by anybody or any casual viewer or errant employee. And I would protect them with my life, frankly. If you are not prepared to do that than I would not get the copies and I would get the originals back to the clients.

They have to be very, very careful as well if they are keeping them electronically. Systems get hacked into the stages are about everyday.

Even those of us in the Internal Revenue Service are worried about that these days.

That is for sure. Director Hawkins,

that is all the time we have for questions today but before we close today's broadcast, what are the most important points you want the attendees to remember? Even after you retire, what you want them to remember?

Yes, see about the question that way but I am going to ignore it and sort of say what at this stage I think I probably need to say to everybody. Some of it will be what I want you to remember and some of it will just be my musings , I guess. Over the past six years I have had the opportunity and the pleasure to speak to and with thousands of you tax professionals ranging from unlicensed return preparers to attorneys in the largest firms in this country and I have continue to be impressed by the sincerity and intensity with which many of you practice your art. And, I use the word art deliberately. I think that the practice of tax is not a science, it is an art form. The more you appreciate and know that I think the better you become at it. I have a saying attached to the signature line on my emails so many of you would not have seen it and it is a quote from Ben Franklin and it says, there is no kind of dishonesty into which otherwise good people more easily fault than that of defrauding the government. While you all are not acting as IRS agents, I know I get pushback for many of you all the time about how you are not an employee of the Internal Revenue Service, in dealing with your clients, you do have an unequivocal ball responsibility to provide your clients with accurate information and correct advice at a reasonable price. And, you have the added professional responsibility to deal with the IRS personnel respectfully , honestly and transparently . Much of the guidance you need to accomplish your responsibilities to clients and tax administration system is contained

in the regulations we call Circular 230. You should view those regulations not as a list of ways you can run afoul again troubled system but as a compendium of your professional best practices for all of your professional conduct. Due diligence, which you have heard me over and over again in the webinar, stress, is really, is really the foundation for everything you do in tax practice. Whether it is a general due diligence rules or due diligence rules specific to tax preparation

document submission, writing of advice, orally giving advice, all of those rules are critical and if you adhere to the due diligence provisions that will ensure that you made great strides in ensuring both you and those otherwise good people you call clients stay on the right side of tax administration. It has been my pleasure and honor to serve OPR for the past six years . I hope I am brought some clarity and transparency and fairness to a process that lacked all three in 2009. And I wish you all well

in your future professional and personal lives. And I hope there will be an opportunity in the future, as I wander around the country doing whatever else I plan to do, that our paths will cross and I hope if they do it you will come up and say hi back.

We so appreciate the six years you have shared with us and all of the values you have added. And has been so meaningful to all of us. Could you let us know who, in the interim, and, will be stepping in as director or acting director? Of OPR?

I hate to be so blunt about this but I have no idea . They are not consulting with me about who my replacement might be. The usual practice for the Internal Revenue Service would be to put my deputy whose name is Lee Martin into that function for the foreseeable future. But, what happened after that is probably not likely to be announced until after the tenth of July. How much more after, I don't know. I

should say you'd all should not worry about that because the numbers we have listed on the OPR website our main line numbers as well as some of the key management people in my office, they are all there, they will be staying. So there will be plenty of people to carry on the work. I would not worry too much at the moment about who the actual person wearing the director's hat is going to be, OPR will continue to function pretty much I think on an even keel for the foreseeable future.

So going forward, as long as they remember your words of wisdom of due diligence, provisions are critical and they should adhere to them for best practices and their practice they will be on the right path.

I remember one of the first webinar Q&A's we did probably four years ago now and I think it was at that one but I certainly know at the forums when I first started speaking there I would say the semi standard, it would be when in doubt sit back take a deep breath and say what would Karen Hawkins do.

That is great guidance. Yes, believe it or not you are very first webinar and looked back in 2010 . So you have provided a lot of fantastic information and guidance over the years and we so appreciated thank you so very much Director Hawkins. You're welcome.

That is all the time we have today and thanks so much for watching our webinar. We hope you learned a few things about the changes to Circular 230, important key provisions and responsibilities for tax professionals as well as a few best practices you can incorporate into your practice. If you have any questions that were not answered today, please visit the IRS website at www..IRS .gov using keywords Circular 230 and OPR. To find a lot more information. And for the latest news and updates as Director Hawkins mentioned, register for the OPR E subsumption or listserv evil stomach at the latest information having to do with OPR from there. If you are pane today to earn credit no further action is required of you at this time. Certificates of completion will be issued to those of you who qualify and they will be emailed and approximately two weeks from the date of this broadcast. In case you would like to view this information again or refer someone who is not available to view the webinar today it will be posted in approximately three weeks in the IRS video portal at www..IRS .gov -- www. IRS videos .gov. Also, if you are interested in doing upcoming webinars, please make sure you visit IRS .gov and put in keyword webinars although not posted yet, just to give you a heads up we are going to be holding and sponsoring a tangible properties regulations webinar on July 15. Be looking forward to that. Thanks again for your time and attendance. Much success to you and your practice and we hope you have a great day.

[Event concluded]